

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

January 20, 2000

THE PROCTER & GAMBLE DISTRIBUTING
COMPANY

Docket No. 1999-874

Application for License to Operate as a
Competitive Electricity Provider

ORDER GRANTING LICENSE

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we license The Procter & Gamble Distributing Company to operate as a competitive electricity provider furnishing aggregator/broker services in Maine pursuant to Chapter 305 of the Commission's Rules.

II. APPLICATION

On December 3, 1999, The Procter & Gamble Distributing Company (Procter & Gamble) applied to the Commission for a license to operate in Maine as a competitive electricity provider, as provided in Chapter 305. On December 23, 1999, Procter & Gamble filed additional information to supplement its earlier filing.

A. Type of Service Proposed

Procter & Gamble proposes to act as an aggregator or broker for electric service provided to the public at retail. Procter & Gamble's application states that the proposed licensee plans to market "aggregation of residential, commercial and industrial customers" throughout all areas of Maine.

B. Fee Paid

With its application, Procter & Gamble paid a \$100 fee to the Commission, as required by section 2(C)(5) of Chapter 305.

III. FINANCIAL ISSUES

A. Security

Procter & Gamble will operate as an electricity broker/aggregator in Maine. Pursuant to section 2(B)(1)(a)(i) of Chapter 305, Procter & Gamble does not have to furnish a security instrument to the Commission.

B. Showing of Professional and Financial Capability

Procter & Gamble will operate as an electricity broker/aggregator in Maine; accordingly, Procter & Gamble is required to demonstrate its professional responsibility pursuant to section 2(B)(1)(b) of Chapter 305. Procter & Gamble filed supporting information to demonstrate its professional responsibility. We have reviewed that information and find that it complies with the requirements of Chapter 305. Procter & Gamble stated that it will not hold retail customer funds, and accordingly is not required to demonstrate its financial capability pursuant to section 2(B)(1)(b) of Chapter 305. If Procter & Gamble wishes to hold customer funds in the future, it must first obtain authority from the Commission.

IV. TECHNICAL ISSUES

A. Showing of Technical Capability

Procter & Gamble will operate as an electricity broker/aggregator in Maine; accordingly, Procter & Gamble is required to demonstrate its technical fitness to conduct its proposed business pursuant to section 2(B)(2)(c) of Chapter 305. Procter & Gamble filed supporting information to demonstrate its technical capability. We have reviewed that information and find that it complies with the requirements of Chapter 305.

B. Resource Portfolio

Procter & Gamble will operate as an electricity broker/aggregator in Maine. Pursuant to section 2(B)(4) of Chapter 305, Procter & Gamble is not required to demonstrate an ability to meet the resource portfolio requirement of 35-A M.R.S.A. § 3210 and the portfolio requirement reporting rules in Chapter 311 of the Commission's rules.

V. CONSUMER PROTECTION ISSUES

A. Showing of Fitness

In its application, Procter & Gamble provided information required by Chapter 305 section 2(B)(3) related to enforcement proceedings and customer complaints. We have reviewed that information and find that it meets the requirements of Chapter 305.

B. Ability to Comply with Consumer Protection Rules

Procter & Gamble will operate as an electricity aggregator/broker in Maine. Pursuant to section 2(B)(6) of Chapter 305, Procter & Gamble is not required to demonstrate its ability to comply with applicable consumer protection requirements.

C. Do-Not-Call List

Chapter 305 section 4(l) states that “[t]he Commission will maintain or cause to be maintained a ‘Do-Not-Call’ list of customers who have requested -- orally, in writing, or by commercially accepted electronic means -- that they not receive telemarketing calls from competitive electricity providers.” We require that licensees use do-not-call list mechanisms already in place nationally to satisfy that requirement. To the extent that it telemarkets to Maine consumers, Procter & Gamble shall comply with the following requirements.

Procter & Gamble must comply with the requirements of the Telephone Consumer Protection Act,¹ the Telemarketing and Consumer Fraud and Abuse Prevention Act,² and related rules of the Federal Communications Commission³ and Federal Trade Commission.⁴ Procter & Gamble must comply with those requirements and must maintain its own do-not-call list as required by those laws and rules, for all intrastate and interstate telemarketing of Maine consumers, including both residential and business customers. Procter & Gamble shall not telemarket to Maine customers on that list, as required in Chapter 305 section 4(l)(1). Procter & Gamble shall update its do-not-call list at least monthly, and maintain copies of that list for at least six months. Procter & Gamble shall provide a copy of that list to the Commission upon request.

Further, each month, Procter & Gamble must obtain listings of Maine consumers who have arranged to be included on the do-not-call list maintained by the Telephone Preference Service of the Direct Marketing Association, Inc.⁵ Procter & Gamble shall not telemarket to Maine customers on that list, as required in Chapter 305 section 4(l)(1).

VI. **ADDITIONAL PROVISIONS**

¹47 U.S.C. § 227

²15 U.S.C. §§ 6101-6108

³47 CFR 64.1200

⁴FTC Telemarketing Sales Rule, 16 CFR Part 310

⁵Telephone Preference Service, Direct Marketing Association, Inc., P.O. Box 9014, Farmingdale, NY 11735-9014

Procter & Gamble must comply with all applicable requirements and limitations in Chapter 305 not explicitly waived in this Order. Procter & Gamble must also comply with all requirements and limitations in other applicable Commission rules, including any applicable future changes in Maine laws and Commission rules, and in other parts of this Order.

VII. ORDERING PARAGRAPHS

Accordingly, we

1. license The Procter & Gamble Distributing Company to operate as a competitive electricity provider in Maine; under this license, The Procter & Gamble Distributing Company may operate only as an aggregator/broker, as defined in Chapter 305 of the Commission's Rules;
2. order that The Procter & Gamble Distributing Company may not hold retail customer funds;
3. order The Procter & Gamble Distributing Company to comply with all Do-Not-Call List requirements contained in Part V(C) of this Order to the extent that it telemarkets to Maine consumers; and
4. order that this license is effective on the date of this Order and valid until revoked by the Commission pursuant to section 3(A)(4) of Chapter 305, or abandoned by the licensee pursuant to sections 2(C)(9) and 2(C)(11) of Chapter 305 of the Commission's Rules.

Dated at Augusta, Maine, this 20th day of January, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Nugent
Diamond

COMMISSIONERS ABSENT: Welch

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.